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No. 87-1796

Supreme Court, U.S.

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JOSEPH F. SPANIEL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

RUTH MASSINGA, *et al.*,

Petitioners,

v.

L. J., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for The Fourth Circuit

APPENDIX TO BRIEF FOR RESPONDENTS IN
OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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June 1, 1988

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L.J., *
An Infant, By And *
Through His Next *
Friend, Lydia Kaye *
Darr *

and *

O.S., *
An Infant, By And *
Through Her Next *
Friend, Jackie *
Garner *

and *

M.S., *
An Infant, By And *
Through Her Next *
Friend, Susan *
Leviton *

and *

C.S., *
An Infant, By And *
Through Her Next *
Friend, Susan *
Leviton *

and *

R.R. *

and *

Civil Action No.:

REQUEST FOR JURY
TRIAL

P.G., *
An Infant, By And *
Through Her Next *
Friend, Margaret *
Evans, On Their *
Own Behalf And On *
Behalf Of All *
Others Similary *
Situating *

Plaintiffs *

-vs- *

RUTH MASSINGA, *
Individually And *
As Secretary Of *
The Maryland *
Department of *
Human Resources, *

and *

FRANK FARROW, *
Individually And *
As Executive Direc- *
tor Of the *
Maryland Social *
Services Admini- *
stration, *

and *

JOY DUVA, *
Individually And *
As Director Of *
The Office of *
Child Welfare *
Services, Maryland *
Social Services *
Administration, *

and *

BUD NOCAR *

Individually And *
As Acting Program *
Manager For Foster *
Care Services Of *
The Maryland Social *
Services Admini- *
stration, *

and *

ALMA RANDALL, *

Individually And *
As Program Manager *
For 24-Hour Group *
Care And Licensing *
Of The Maryland *
Social Services *
Administration, *

and *

BALTIMORE CITY DE- *
PARTMENT OF SOCIAL *
SERVICES, *

and *

GEORGE MUSGROVE, *

Individually And *
As Director Of The *
Baltimore City *
Department of *
Social Services, *

and *

MICHAEL WARNER- *
BURKE, *
Individually And *
As Chief Of Protec- *
tive Services For *
The Baltimore City *
Department of *
Social Services, *

and *

CHERYL GIBSON, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

BRIDGETTE THOMAS *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

MARYLYN HOLCOMBE, *
Individually, And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

DELORES COOPER, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

GAIL FULTON, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

ELVIA DEWATKINS, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

DAWN ZINKAND, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

JERILYN SIMMONS, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

ANTHONY BAIRD, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

SUSAN LIEMAN, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

ALLEN COLLINS, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

SUSAN ZURAVIN, *
Individually And *
As Caseworker For *
The Baltimore City *
Department of *
Social Services, *

and *

EMMA GRAVES, *
Individually And
As Caseworker For *
The Baltimore City
Department of *
Social Services, *

and *

JOHN ROES 1 Through *
12, *
Individually And
As Caseworker For *
The Baltimore City
Department of *
Social Services, *

Defendants *

 * * * * * * *

COMPLAINT

I. INTRODUCTION

1. This class action is brought by children in Maryland who have been or will be placed in foster homes approved by and under the direct control and supervision of the Baltimore City Department of Social Services. While in these homes, the children have been or

are at risk of being abused or neglected, subjected to grossly inadequate care and denied an opportunity for a permanent home. These injuries have resulted from the failure of the state and city officials to meet the minimum requirements for an adequate foster care program established by federal law.

2. The foster care program in Maryland is created and governed by federal and state statutes and regulations. It is financed by federal appropriations made available to the states under the provisions and conditions of the Social Security Act, 42 U.S.C. §§601, et seq., as matching payments for state funds. As a condition of receiving such funds, Defendants must comply with federal statutes and regulations. The Baltimore City

Department of Social Services, its agents and employees ("city defendants") are responsible for the day-to-day operation of the foster care program in Baltimore City. The Maryland Social Services Administration, its agents and employees ("the state defendants") are responsible for and have authority to supervise, direct, and control the city defendants' foster care program.

3. The foster care program is designed to provide, among other things, short-term care and supportive and rehabilitative services for a child who must be placed outside the home of his parents or legal guardian because the child's physical or emotional well being is jeopardized by conditions in that home. In addition, services are to be provided to both parent and child to

facilitate the child's return home or to implement an alternative permanent plan, such as adoption.

4. Each member of the Plaintiff class has been placed in foster care either as a result of an agreement between their parents or legal guardian and the local Department of Social Services or pursuant to an order of the Circuit Court finding the child to have been abused or neglected and committing the child to the care and custody of the local Department of Social Services. Once Plaintiffs have been placed in the custody of the local Department of Social Services, that Department is responsible for and has the authority to select the type of and specific foster care placement for each Plaintiff. Foster care sometimes consists of

placement in a group home or institution, but in most cases results in placement in a foster family home.

5. The failure of state and city officials responsible for the foster care program to fulfill their responsibility under federal law and their deliberate indifference to the care and safety of foster children has caused, and will cause, injury to the Plaintiffs and the members of their class. Plaintiffs have been subjected to and are at risk of suffering further abuse and neglect in the foster homes inadequately screened, approved, and supervised by the Baltimore City Department of Social Services. While residing in these homes, they have been, and will continue to be, denied services to meet both their physical and emotional needs.

Furthermore, the Defendants' failure to provide case plans, case reviews, and other services to Plaintiffs and members of their class has deprived and will continue to deprive them of an opportunity for return to their home or other permanent placement.

6. Plaintiffs assert that the Defendants' practices have violated their rights under the Fourteenth Amendment to the United States Constitution; the Social Security Act, 42 U.S.C. §§601, et seq. and the federal regulations promulgated pursuant to that Act, 45 C.F.R. §§1355, et seq.; and the Child Abuse Prevention and Treatment Act, 42 U.S.C. §§5101, et seq. and the federal regulations promulgated pursuant to that Act, 45 C.F.R. §§1340, et seq.

7. Plaintiffs on behalf of themselves and on behalf of the class, seek declaratory and injunctive relief to enforce their rights under the United States Constitution, federal statutes and regulations. The individual Plaintiffs seek actual compensatory and punitive damages for physical and psychological harms suffered while in the foster homes as a proximate result of the acts and omissions of the Defendants. Neither compensatory nor punitive damages are sought herein for any of the unnamed class members. In bringing this action on their behalf for equitable relief, the named Plaintiffs do not waive the right of the unnamed class members to seek such damages.

II. JURISDICTION

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8. This action arises under 42 U.S.C. §§1983 and is brought to redress the deprivation under color of state law, of rights, privileges and immunities secured by the Fourteenth Amendment to the United States Constitution and by Acts of Congress.

9. Jurisdiction is conferred on this Court by 28 U.S.C. §§1343 (a)(3) and (4).

10. Jurisdiction is also conferred on this Court by 28 U.S.C. §1331 which provides for jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States.

11. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§2201 and 2202 which provide for this Court's authority to declare the rights of any interested

party and to grant necessary or proper relief on the declaratory judgment in a case of actual controversy within its jurisdiction.

III. PARTIES

A. PLAINTIFFS

12. L.J. is ten years old, his date of birth being August 7, 1974. He brings this action by and through his next friend, Lydia Kaye Darr. They are both United States citizens and residents of Maryland. L.J. has been a foster child under the care and custody of the Baltimore City Department of Social Services since July, 1977.

13. O.S. is one year old, her date of birth being September 9, 1983. She brings this action by and through her next friend, Jacki Garner. They are

both United States citizens and residents of Maryland. O.S. has been a foster child under the care and custody of the Baltimore City Department of Social Services since January 6, 1984.

14. M.S. is 12 years old, her date of birth being May 26, 1972. She brings this action by and through her next friend, Susan Leviton. They are both United States citizens and residents of Maryland. M.S. has been a foster child under the care and custody of the Baltimore City Department of Social Services since April, 1983.

15. C.S. is six years old, her date of birth being February 21, 1978. She is the sister of Plaintiff M.S. and she brings this action by and through her next friend, Susan Leviton. They are both United States citizens and

residents of Maryland. C.S. has been a foster child under the care and custody of the Baltimore City Department of Social Services since April, 1983.

16. R.R. is 18 years old, her date of birth being June 14, 1966. She is a citizen of the United States and a resident of Maryland. R.R. has been a foster child under the care and custody of the Baltimore City Department of Social Services since February, 1983.

17. P.G. is 17 years old, her date of birth being July 3, 1967. She brings this action by and through her mother, Margaret Evans, as next friend. They are both United States citizens and residents of Maryland. P.G. has been a foster child under the care and custody of the Baltimore City Department of Social Services since July 14, 1967.

B. DEFENDANTS

18. Ruth Massinga is sued individually and in her official capacity as Secretary of the Department of Human Resources for Maryland. In that capacity she is responsible for the operation of the State Department of Human Resources, which includes the Social Services Administration and its programs of foster care and child welfare services.

19. Frank Farrow is sued individually and in his official capacity as Executive Director of the Maryland Social Services Administration. In that capacity he is responsible for the administration of the Social Services Administration and for the supervision of the local Departments of Social Services throughout Maryland, including

the Baltimore City Department of Social Services. The Maryland Social Services Administration is an agency of the State of Maryland. It is the central coordinating and directing agency for the child welfare services, including foster care services, and exercises supervision over all public and private institutions having the care, custody and control of dependent, neglected and abandoned children. It has the power to inspect the management of any agency engaged in social services or welfare activities. It is authorized and empowered to adopt and has adopted rules and regulations governing the standards for and licensing of child placement agencies and foster family homes in Maryland. It is the state agency in Maryland which administers and supervises the

administration of programs under Title IV of the Social Security Act, 42 U.S.C. §§601, et seq., and under the Child Abuse Prevention and Treatment Act of 1974, 42 U.S.C. §§5101, et seq.

20. Joy Duva is sued individually and in her official capacity as the Director of the Office of Child Welfare Services of the Maryland Social Services Administration. In that capacity she is responsible for the supervision of all child welfare programs, including the licensing of foster care and child placement agencies which is the direct responsibility of the local Departments of Social Services.

21. Bud Nocar is sued individually and in his official capacity as Acting Program Manager for Foster Care Services within the Maryland Social Services

Administration. In that capacity he is responsible for the definition, development, implementation, monitoring, and evaluation of the foster care programs established and maintained by the local Departments of Social Services, including the Baltimore City Department of Social Services.

22. Alma Randall is sued individually and in her official capacity as Program Manager for 24-hour group care and licensing of the Maryland Social Services Administration. In that capacity she is responsible for implementing state law and regulations concerning the licensing of group facilities and child placement agencies in Maryland and monitoring and evaluation their compliance with state law and regulation.

23. Defendants Massinga, Farrow, Duva, Nocar, and Randall are hereinafter referred to as the "state defendants."

24. The Baltimore City Department of Social Services is an agency of the City of Baltimore and the State of Maryland and has legal and physical custody of the Plaintiffs and members of their class. The Baltimore City Department of Social Services is responsible for recruiting, screening, approving, monitoring, and supervising foster homes and providing services to Plaintiffs while in foster care.

25. George Musgrove is sued individually and in his official capacity as Director of the Baltimore City Department of Social Services. In that capacity he is responsible for the administration and supervision of all

social service and public assistance activities carried on by the Baltimore City Department of Social Services, including its foster care, child welfare services, and protective services programs.

26. Michael Warner-Burke is sued individually and in his official capacity as Chief of the Protective Services Division for the Baltimore City Department of Social Services. He was formerly, and at all times relevant to this complaint until on or about June 11, 1984, the Chief of Foster Care Services for the Baltimore City Department of Social Services. In his present capacity, he is responsible for the administration and supervision of the Protective Services Division of the Baltimore City Department of Social Services and

for directing, training, and controlling all subordinates, social workers, and caseworkers in that division. The Protective Services Division is responsible for investigating reports of suspected abuse and neglect involving Plaintiffs and members of their class and taking prompt action to protect them from further maltreatment.

27. Defendants Gibson, Thomas, Holcombe, Fulton, DeWatkins, Simmons, Baird, Collins, Suravin, Graves, and John Roes 1 through 12 are sued individually and in their official capacities as caseworkers. Caseworkers for the Baltimore City Department of Social Services are responsible for implementing the rules, regulations, policies, and decisions of the Maryland Social Services Administration and the

Baltimore City Department of Social Services affecting foster children within the care and custody of the Baltimore City Department of Social Services. They are responsible for the placement and supervision of foster children who are in the care and custody of that Department and who are placed in shelter care and foster homes.

28. Defendant Cheryl Gibson was the caseworker assigned to Plaintiff L.J.'s case from approximately August, 1981 until November, 1983.

29. Defendant Bridgette Thomas was the caseworker assigned to Plaintiff L.J.'s case from approximately December, 1978 until June, 1981.

30. Defendant Marilyn Holcombe was the caseworker assigned to Plaintiff

L.J.'s case from approximately June, 1977 until November, 1977.

31. Delores Cooper is sued individually and in her official capacity as Caseworker Supervisor for the Baltimore City Department of Social Services. As a Caseworker Supervisor, Defendant Cooper was responsible for directing and controlling all subordinates, social workers, and caseworkers in her department. At all times relevant hereto, Defendant Cooper supervised Defendants Holcombe, Thomas, and Gibson while they were assigned to Plaintiff L.J.'s case from approximately June, 1977 until November, 1983. Defendant Cooper was directly responsible, along with Defendants Holcombe, Thomas, and Gibson, for formulating Plaintiff L.J.'s case plan and for making final decisions

concerning Plaintiff L.J.'s treatment and placement.

32. At all times relevant hereto, Defendant Gail Fulton was one of the caseworkers assigned to Plaintiff O.S.'s case.

33. At all times relevant hereto, Defendant Elvia DeWatkins was one of the caseworkers assigned to Plaintiff O.S.'s case.

34. Dawn Zinkand is sued individually and in her official capacity as Caseworker Supervisor for the Baltimore City Department of Social Services. As a Caseworker Supervisor, Defendant Zinkand was responsible for directing and controlling all subordinates, social workers, and caseworkers in her department. At all times relevant hereto, Defendant Zinkand supervised Defendants

-Gail Fulton and Elvia DeWatkins. Defendant Zinkand was directly responsible, along with Defendants Fulton and DeWatkins, for formulating Plaintiff O.S.'s case plan for making final decisions concerning Plaintiff O.S.'s treatment and placement.

35. At all times relevant hereto, Defendant Jerilyn Simmons was one of the caseworkers assigned to the cases of Plaintiffs M.S. and C.S.

36. At all times relevant hereto, Defendant Anthony Baird was one of the caseworkers assigned to the cases of Plaintiffs M.S. and C.S.

37. Susan Lieman is sued individually and in her official capacity as Caseworker Supervisor for the Baltimore City Department of Social Services. As a Caseworker Supervisor, Defendant

Lieman was responsible for directing and controlling all subordinates, social workers, and caseworkers in her department. At all times relevant hereto, Defendant Lieman supervised Defendants Simmons and Baird. Defendant Lieman was directly responsible, along with Defendants Simmons and Baird, for formulating Plaintiffs M.S. and C.S.'s case plan for making final decisions concerning Plaintiffs M.S. and C.S.'s treatment and placement.

38. At all times relevant hereto, Defendant Allen Collins was one of the caseworkers assigned to Plaintiff R.R.'s case.

39. At all times relevant hereto, Defendant Susan Zuravin was one of the caseworkers assigned to Plaintiff P.G.'s case.

40. At all times relevant hereto, Defendant Emma Graves was one of the caseworkers assigned to Plaintiff P.G.'s case.

41. John Roes 1 through 12 are sued individually and in their official capacity as caseworkers or supervisors for the Baltimore City Department of Social Services. Plaintiffs do not know the true names of of the Defendants sued herein as John Roes 1 through 12 and therefore sue these Defendants by fictitious names and will amend the complaint to show their true names when they are ascertained. Plaintiffs are informed and believe that these Defendants named as John Roes 1 through 12 are agents and employees of the Baltimore City Department of Social Services and that they conducted the

investigations and approved the foster homes in which the named Plaintiffs L.J., O.S., M.S., C.S., R.R., and P.G. were placed.

42. Defendants, Baltimore City Department of Social Services, Musgrove, WarnerBurke, Gibson, Thomas, Holcombe, Cooper, Fulton, DeWatkins, Zinkand, Simmons, Baird, Lieman, Collins, Zuravin, Graves and John Roes 1 through 12 are hereinafter referred to as the "city defendants."

IV. CLASS ACTION ALLEGATIONS

43. Plaintiffs L.J., O.S., M.S., C.S., R.R., and P.G. bring this action on behalf of themselves and pursuant to Fed. R. Civ. P. 23(b)(2) on behalf of all other persons similarly situated. The members of this class are all those

children who are, have been, or will be placed in foster homes by the Baltimore City Department of Social Services and are or will be placed in the custody of the Baltimore City Department of Social Services pursuant to:

(1) An authorization or order of emergency shelter care granted to the Baltimore City Department of Social Services by an intake officer or by the Circuit Court for Baltimore City, Division for Juvenile Causes, under the provisions of Md. Cts. & Jud. Proc. Code Ann. §3-815, or

(2) An order of commitment, care, or custody granted to the Baltimore City Department of Social Services by the Circuit Court for Baltimore City, Division for Juvenile Causes, under Md. Ct. & Jud. Proc. Code Ann. §3-820, or

(3) An order of guardianship with the right to consent to adoption or long-term care short of adoption granted to the Baltimore City Department of Social Services by the Circuit Court for Baltimore City under Md. Fam. Law Code Ann. §§5-301, et seq., or

(4) A voluntary foster care agreement between their natural parents or legal guardians and the Baltimore City Department of Social Services.

44. The class is so numerous that joinder of all members is impractical in that there are over two thousand five hundred (2,500) children currently in foster care in Baltimore City and approximately five hundred (500) new children are placed in shelter or foster care homes each year as a result of commitments to the Baltimore City

Department of Social Services by the Circuit Court.

45. There are questions of law and fact common to the class in that:

- a. All members of the class are or will be in the custody of the Baltimore City Department of Social Services.
- b. All members of the class seek to vindicate rights, privileges, and immunities which have been violated by the Defendants and which are secured by the Fourteenth Amendment to the United States Constitution, provisions of the Social Security Act, 42 U.S.C. §§601, et seq., and provisions of the Child Abuse Prevention and Treatment Act

of 1974, U.S.C. §§5101, et
seq.

- c. All members of the class challenge similar conditions of their foster homes and inadequacies in foster care services provided by the Baltimore City Department of Social Services.

46. The claims of the named Plaintiffs are typical of the claims of the class in that the same acts and omissions of Defendants form the basis for the claims of all members of the class.

47. The named Plaintiffs will fairly and adequately represent and protect the rights and interests of the class.

48. Defendants have acted and failed to act and continue to do so on the grounds which are generally applicable to the class, thereby making final declaratory and injunctive relief appropriate with respect to the class as a whole.

V. STATUTORY AND REGULATORY FRAME-
WORK OF THE FOSTER CARE PROGRAM

49. The State of Maryland participates in, and receives federal funds for, programs created by three inter-related subtitles of the Social Security Act: Title IV-A, (Aid to Families with Dependent Children, or "AFDCⁿ"), 42 U.S.C. §§601-615; Title IV-B (Child Welfare Services), 42 U.S.C. §§620-628; and Title IV-E (Foster Care and Adoption Assistance), 42 U.S.C. §§670-676.

50. As a condition of the receipt of federal funds for the basic AFDC program under Title IV-A, Maryland must have in effect a state plan for foster care and adoption assistance under Title IV-E. The state is required to operate its foster care and adoption assistance program in accordance with all the conditions set forth in Title IV-E of the Act. 42 U.S.C. §602(a)(20).

51. The foster care program created by Title IV-E must be in effect statewide; it is mandatory upon local agencies that administer the programs; and it must be coordinated with the programs at the state or local level assisted under Titles IV-A and IV-B. 42 U.S.C. §671(a)(3) and (4); 45 C.F.R. §§1356.10, et seq.

52. The federal funds provided to Maryland under the Title IV-E foster care program are used to cover the costs of food, clothing, shelter, daily supervision, school supplies, and personal items for foster children. Each child is entitled to have foster care maintenance payments made on his or her behalf while in a foster family home, 42 U.S.C. §671(a)(1), and each such home must be "licensed by the state . . . or . . . approved . . . as meeting the standards established for such licensing." The state is reimbursed at a rate of approximately 50% for the above expenses. Federal funds are also used to cover 75% of the costs of training caseworkers and others responsible for foster care services. Federal financial participation at the rate of 50% is

available for administrative expenses associated with the operation of the state's foster care program, including such times as recruitment and licensing of foster homes, placement of the child, development of the case plan, case reviews, and case management and supervision. 42 U.S.C. §674, 45 C.F.R. §1356.60.

53. In addition to the receipt of federal funds under Titles IV-A and IV-E, Maryland has at all times relevant to this complaint received federal funds under Title IV-B (Child Welfare Services). Funds received under Title IV-B of the the Social Security Act have been, and are, used to cover the costs of caseworker salaries, counseling or treatment for foster children, administrative expenses, and other services of

the local Departments of Social Services necessary for assuring adequate care of children placed in foster care. 42 U.S.C. §625(a)(1), 45 C.F.R. §1357.10.

54. Beginning with federal fiscal year 1981 (October 1, 1980 through September 30, 1981), states have been, and are, eligible for supplemental funds under Title IV-B if they provide, inter alia, a case review system, as explicitly defined in the federal law, for each child in foster care under the supervision of the state. 42 U.S.C. §627; 45 C.F.R. §1357.25.

55. Since October 1, 1980, Maryland has received the supplemental Title IV-B funds, thus making certain requirements of case review, case plans, and proper care and services applicable to children in the foster care program

operated by the Defendants. 42 U.S.C. §627.

56. The State of Maryland also has elected to participate in, and does receive funds under, the Child Abuse Prevention and Treatment Act. 42 U.S.C. §§5101, et seq.

57. As a condition for receipt of federal funds under Title IV-E, Maryland is required to establish, maintain, apply, and periodically review standards of, inter alia, safety, sanitation, and civil rights for foster children in foster family homes receiving funds under either Title IV-B or Title IV-E. In particular, the defendants must:

(10). . . be responsible for establishing and maintaining standards for foster family homes and child welfare institutions which are reasonably in accord with recommended standards of

national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provide[] that standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this subchapter.

(11) provide[] for periodic review of the standards referred to in the preceding paragraph . . . to assure their continuing appropriateness.

42 U.S.C. §671(a)(10) and (11).

58. Because they receive funds under Title IV-E and Supplemental IV-B funding, Defendants are required to develop a case plan and case review system that maintains, inter alia, appropriate foster care placements, assures proper care and services for the

child, and meets the best interests and special needs of the child. 42 U.S.C. §§627(a)(2)*(B), 671(a)(16), 675(1), 675(5); 45 C.F.R. §§1356.21, 1357.25. A case plan is defined by 42 U.S.C. §675(1) as:

a written document which includes at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into a judicial determination made with respect to the child in accordance with section 672(a) (1) of this title; and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or

the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

42 U.S.C. §675(5) defines a case review system as a system in which, inter alia,

(A) each child has a case plan designed to achieve placement in the least restrictive (most family-like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child.

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or administrative review . . . in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress . . . made toward alleviating the

causes necessitating
placement. . .

59. As a further condition for receipt of funds under Title IV-E and Supplemental IV-B funding, Defendants are required to ensure that each child's case plan provides "that services are provided to the parents, child and foster parents in order to improve the conditions in the parents' home or facilitate return of the child to his own home or the permanent placement of the child . . ." 42 U.S.C. §§627(a)(2) (B), (C), 671(1)(16), and 675(1). Defendants must also make "in each case, reasonable efforts to make it possible for the [foster] child to return to his home." 42 U.S.C. §671(a)(15); 45 C.F.R. §1356.21.

60. Among the standards for foster homes and foster parents that the state defendants have established and purport to maintain through the city defendants in order to comply with the Social Security Act requirements are the following:

- a. Foster parents selected by the agency must be capable of providing good parenting and foster homes approved by the agency must meet certain requirements for foster family homes;
- b. Foster parents and members of their families must be in good mental and physical health;
- c. Foster parents must have knowledge, interest in, and

practice principles of good child care;

- d. Foster parents must have the maturity and personality characteristics such that they provide an emotional climate in which the child can grow and mature and have the maximum opportunity for healthy personality development;
- e. The age and strength of foster parents must be such that they can meet the needs of the foster children placed with them;
- f. Foster parents must support and encourage children to attend school regularly, to make progress therein, and

provide the children with adequate clothing and other supplies necessary for their participation in all school programs;

- g. The foster home must meet the public health and sanitary requirements of the local health department;
- h. The foster home must have accessible space for outdoor activity, free from conditions dangerous to the health and safety of children;
- i. The foster home must provide each child with sleeping space and privacy and his own individual bed;
- j. The foster home must be adequately furnished and

provide children with items essential to basic health and comfort, including but not limited to adequate bedding, linens, and other personal essentials.

61. In order to fulfill the state's obligations under federal statutes to maintain standards for foster family homes, to provide proper care and services to foster children, and to achieve reunification or other alternate permanent placement for foster children, the state defendants have established requirements that the city defendants must among other things:

- a. Maintain staff sufficient in number and qualification for the agency to carry out its foster care responsibilities;

- b. Assure that staff are qualified for their assignments and that they are regularly and consistently supervised by staff with professional training in social work and with experience in social work practices;
- c. Provide continued training and development of all staff members and other additional help to enable staff to develop professional competence;
- d. Maintain proper medical and casework records;
- e. Select and maintain foster homes in sufficient number and variety to provide for the

types of children for whom the agency is responsible;

- f. Recognize when a child needs psychological and psychiatric service and assure that the child receives whatever service he needs;
- g. Assure that children in its care receive physical and dental examinations at least annually and that the medical and dental examinations at least annually and that the medical and dental care recommendations are followed;
- h. Closely supervise and regularly re-evaluate the child's growth and development in the foster home. Re-evaluations must be conducted by the local

Department of Social Services
90 days after the child's
initial placement, 180 days
after placement, and at least
once every six months there-
after, or more frequently if
there is a substantial change
in the child's circumstances;

- i. Provide supportive caseworker
and other rehabilitative
services to the child who is
in foster care;
- j. Upon receiving a report of
suspected child abuse, make a
thorough and prompt investi-
gation of that report, includ-
ing an on-site investigation
within twenty-four (24) hours
during which the Department,
its agents, and employees must

see the child, attempt to have an on-site interview with the child's caretaker, and decide on the health, safety, and well-being of the child;

- k. Upon receiving a report of suspected child neglect, make a thorough and prompt investigation of that report, including an on-site investigation within five (5) days during which the Department, its agents, and employees must see the child, attempt to have an on-site interview with the child's caretaker, and decide on the health, safety, and well-being of the child.

62. As a further condition for receipt of federal funds under Title

IV-E, Defendants are required to provide that:

where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this subchapter is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency.

42 U.S.C. §671(a)(9).

63. As a condition for receiving federal funds under the Child Abuse Prevention and Treatment Act and as a further condition for receiving funds under Titles IV-B and IV-E, the state and city defendants must ensure that investigations of reports of suspected abuse and neglect are promptly initiated

and that upon a finding of abuse or neglect immediate steps are taken to protect the health and welfare of the abused or neglected child. 42 U.S.C. §5103(b)(2)(c).

64. As a further condition for receiving federal funds under the Child Abuse Prevention and Treatment Act, the state and city defendants, upon receipt of a report of abuse or neglect in a foster home approved by and under the supervision of the local Department of Social Services, must ensure that the investigation is made by some properly constituted authority other than the local Department of Social Services or the Social Services Administration. 45 C.F.R. §1340.14(3).

VI. STATEMENT OF FACTS

A. INDIVIDUAL PLAINTIFFS

L.J.

65. On or about June 1, 1977, L.J., then two years old, was placed in the home of Pinkie B. pursuant to a voluntary agreement between his mother and the Baltimore City Department of Social Services. He remained in that foster home for more than six years until he was removed as a result of the first review of his case conducted by the Circuit Court for Baltimore City, Division for Juvenile Causes.

66. On or about July 14, 1977, Defendants Holcombe and Cooper requested that a foster home study for the home of Pinkie B. be conducted by Defendants John Roes 1 and 2.

67. Defendants John Roes 1 and 2 investigated and approved the home of Pinkie B. as a foster home for L.J.

68. In August, 1977, the Baltimore City Department of Social Services initiated the payment of foster care benefits to the foster mother on behalf of and for the benefit of L.J.

69. L.J.'s foster mother was not capable of providing safe and proper care for L.J. which Defendants Warner-Burke, Gibson, Thomas, Holcombe, Cooper, and John Roes 1 and 2 knew or should have known if, prior to approving the home, these Defendants had adequately investigated it, or, if after initially approving it, they had properly supervised L.J.'s foster home.

70. L.J.'s foster mother was and is an alcoholic who has been treated for alcoholism and alcoholism-related problems on more than 41 separate occasions as both an in-patient and out-patient.

While L.J. was placed in her home, she was taken to Johns Hopkins Hospital on many occasions with blood alcohol levels in the toxic range.

71. L.J.'s foster mother has a history of serious mental illness including several suicide attempts.

72. L.J.'s foster mother has been involved in many violent altercations in her home and in the presence of L.J. Several of these fights have resulted in stab wounds and other serious injuries to the foster mother, requiring medical treatment.

73. L.J.'s foster mother frequently left L.J. in the care of person who were incapable of providing proper care and supervision for L.J.

74. The home environment of the foster mother was chaotic, with as many

as eight children and adults living in the home and L.J. forced to share a bedroom and a bed with an 85 year-old disabled man.

75. Throughout L.J's placement in the home, he was subjected to physical and emotional abuse both by the foster mother and by other persons to whom she entrusted his care. The physical injuries which L.J. suffered as a result of that abuse have left permanent scars affecting virtually every part of his body including the legs, face, arms, chest, abdominal area, back and buttocks.

76. The foster care review hearing which finally resulted in L.J. removal from the abusive and neglectful foster home in which the Baltimore City Department of Social Services had placed him

six years earlier was initiated by the foster care review process of the juvenile court and was not the result of a request or any other action by any of the state or city defendants.

77. For more than six years, while in foster care, L.J. did not have a case plan nor were any case reviews conducted on his behalf by either the state or city defendants.

78. L.J.'s case was unassigned and no supervision of his foster home was provided for substantial periods of time including most of 1978.

79. The failure to provide supervision of L.J.'s foster home was due, in part, to the excessive caseloads of workers in the Baltimore City Department of Social Services.

80. From November 1, 1977 through May, 1980, Defendants Thomas and Cooper made only five visits to L.J.'s foster home.

81. Even a cursory evaluation of the foster mother and the foster home environment would have led to the discovery that L.J.'s foster home was not appropriate and would have resulted in his removal from the home.

82. During the 1979 to 1980 school year, L.J.'s first year in school, L.J. missed 55 days out of the 180-day school year. During that school year his performance was extremely poor in that he had a short attention span, was easily distracted, appeared withdrawn, and could not follow simple directions.

83. Defendant Bridgette Thomas knew that L.J. had been absent for

almost onethird of his first school year while living in the foster home.

84. In April, 1980, L.J. was referred by school personnel for a screening to determine an appropriate special educational program for him. As a result of that screening, L.J. was retained in kindergarten and further evaluations were scheduled.

85. In December, 1980, a psychological evaluation of L.J. was conducted by a psychologist for the Baltimore City Public Schools.

86. The school psychologist made the following observations in her evaluation of L.J. in December, 1980:

- a. That L.J. had not developed social behaviors commensurate with his age;

- b. That L.J. stated that he didn't like the foster home and wanted to live elsewhere;
- c. That L.J. engaged in many self destructive behaviors, including sticking tacks in his hands;
- d. That L.J. needed constant close supervision while in the classroom;
- e. That L.J. was an extremely anxious and a depressed child and had a very poor selfimage.

87. As a result of her evaluation of L.J., the school psychologist concluded:

- a. That L.J. was functioning at the mildly intellectually limited level of intelligence

but had the potential for higher functioning;

b. That the depression and anxiety that L.J. was experiencing were caused by the home environment of the foster mother;

c. That L.J.'s emotional problems were the primary factor interfering with his learning.

88. The school psychologist recommended that L.J. be immediately removed from the home in which the Baltimore City Department of Social Services had placed him. She also recommended that L.J. be provided with individual counseling to resolve the emotional problems which were interfering with his learning and that the Baltimore City Department of Social

Services obtain a thorough physical and mental examination of L.J.

89. The school psychologist discussed her observations, conclusions, and recommendations during several telephone conversations with, and school conference attended by, Defendants Thomas and Cooper during the months of October, November, and December, 1980. The psychologist's written reports which contained her recommendations for L.J. were readily available to Defendants Thomas and Cooper.

90. Despite Defendants Thomas and Cooper's actual knowledge of the school psychologist's recommendations that L.J. should be immediately removed from the foster home and that he was in need of individual counseling and further examination, Defendants Thomas and

Cooper neither removed him from the foster home nor obtained the recommended services for him.

91. During the next several months following the school psychologist's recommendations, L.J.'s performance and behavior in school continued to deteriorate. He repeatedly talked about running away and killing himself; he referred to himself as "stupid" and "ugly"; and he became physically and verbally abusive to his peers and teachers.

92. In September, 1981, L.J. was transferred to a school for emotionally disturbed children.

93. During the 1981-82 and the 1982-83 school years, L.J.'s behavior and achievement in school worsened as the same serious problems in the foster

home that had existed in earlier years continued unabated.

94. Throughout L.J.'s school placement beginning in the school years 1979 to 1980 and continuing through the school year 1982-1983, L.J.'s foster mother was asked to attend school conferences to which the school personnel discussed L.J.'s progress, behavior, treatment, and alternative placements.

95. L.J.'s foster mother failed to attend any of the school conferences scheduled during those school years. Defendants Cooper, Gibson, and Thomas knew that the foster mother was not attending school conferences for L.J.

96. During the school year 1979-80 and continuing through the school year 1982-83, Defendants Cooper, Gibson, and

Thomas were invited to attend or were aware of school conferences conducted to discuss L.J.'s failure to make progress in school. These Defendants did not attend most of the school conferences after December, 1980, but relied upon the foster mother's statements that L.J. was adjusting well and that his performance in school was good.

97. L.J.'s foster mother failed to provide L.J. with the support and encouragement that he needed and that would have enabled him to make progress in school.

98. On July 29, 1981, medical and social work staff at Johns Hopkins Hospital submitted a report of suspected child abuse for L.J. to the Baltimore City Department of Social Services. That report indicated that:

- a. L.J. was seen at Johns Hopkins Hospital on July 28, 1981, he had numerous cuts on his chest area and other parts of the body, and suffered from chronic poor hygiene; and
- b. The foster mother who accompanied L.J. was intoxicated.

L.J. was only six years old at the time of this report.

99. The report of suspected abuse of July, 1981 was the second report of suspected abuse for L.J. submitted to the Baltimore City Department of Social Services.

100. Despite the fact that the Baltimore City Department of Social Services received the report of suspected abuse for L.J. on July 29, 1981,

no investigation of any kind was conducted until August 20, 1981.

101. On or about August 19, 1981, Defendant Gibson visited L.J.'s foster home. During that visit Defendant Gibson conducted an interview of L.J. The entire interview was conducted in the home and in the presence of the foster mother. During her interview Defendant Gibson noted the following:

- a. The home situation was very chaotic with people, some related and others unrelated to the foster mother, constantly going in and out of the house.
- b. L.J. had both old and new scars and injuries.

c. L.J.'s foster mother admitted that she and L.J.'s mother were drinking buddies.

d. L.J. asked if he could go and live with someone other than the foster mother.

102. Following the second report of suspected abuse on July 29, 1981, Defendant Gibson did not obtain a medical examination of L.J. Instead, she relied upon the foster mother's statements that L.J.'s injuries were the result of playing, falling, or getting into fights.

103. On or about August 20, 1981, Defendants Cooper and Gibson met with other caseworkers and supervisors within the foster care and protective services divisions of the Baltimore City Department of Social Services to discuss the

July 29, 1981, report of suspected abuse. At the end of that conference they concluded that there was strong reason to question the supervision and physical care of L.J. in the foster home and that the question of the protection of L.J. remained a serious issue requiring immediate intervention.

104. At the end of the conference referred to in Paragraph 103, Defendants and Gibson reached the following additional conclusions:

- a. That there was a serious problem in L.J.'s foster home;
- b. That L.J.'s foster mother was not properly supervising L.J.;
- c. That physical abuse of L.J. was uncertain;

d. That L.J.'s development indicated neglect in the foster home.

105. Defendant Michael Warner-Burke received reports and memorandum concerning L.J.'s foster home, both about and after the August 20, 1981, conference but he failed to take any action to ensure the health and safety of L.J.

106. More than three months after the report of suspected abuse, during October and November, 1981, L.J. and his foster mother were seen for psychiatric and psychological evaluation at the Children's Mental Health Center of Johns Hopkins Hospital. Separate evaluations were conducted by a child psychologist and a child psychiatrist.

107. The child psychologist conducted interviews with L.J. and his

foster mother and completed the psychological evaluation of L.J. During and as a result of these interviews and evaluations the psychologist observed and learned the following:

- a. That L.J. had numerous scars on his face and hands;
- b. That there were numerous inconsistencies in the explanations for L.J.'s injuries given by L.J. and his foster mother;
- c. That L.J.'s clothes were filthy and his personal hygiene was very poor;
- d. That L.J. engaged in numerous self-destructive behaviors;
- e. That L.J. was in constant fear of being destroyed;

- f. That L.J. perceived himself as helpless;
- g. That there were at least four adults other than his foster mother living in the home with the foster mother and L.J.;
- h. That all the adults in the household, including the foster mother, were alcoholics and that one of the other adults in the home suffered from severe mental illness;
- i. That L.J.'s foster mother had two sons, one of whom was a drug addict and another who was incarcerated;
- j. That the foster mother beat L.J. with a belt or strap whenever he got on anybody's nerves;

k. That the foster mother, while drunk, had assaulted the principal at L.J.'s school.

108. As a result of the interviews of L.J. and his foster mother and the evaluation of L.J., the psychologist concluded that:

- a. L.J. had special needs both in the area of cognitive and emotional functioning; and
- b. These problems were seriously aggravated by the morbid, chaotic, and abusive environment in the foster home.

109. As a result of the interviews of L.J. and his foster mother and her evaluations of L.J., the psychologist recommended to Defendants Gibson, Cooper, and WarnerBurke that L.J. be

immediately removed from the home of his foster mother.

110. The separate psychiatric consultation described in paragraph 106 was conducted with a child psychiatrist who interviewed L.J. and L.J.'s foster mother. During the interviews, the psychiatrist observed or learned the following:

- a. That L.J. was covered with scratches, healed lacerations, and other evidence of multiple non-accidental injuries;
- b. That L.J.'s explanations for the injuries were contradictory;
- c. That L.J. threatened to run away from the foster home and the foster mother threatened to give him away;

- d. That L.J. was permitted to roam the streets, exploring empty houses in the community;
- e. That the foster mother was not aware of L.J.'s lack of progress and poor behavior in school.

111. As a result of the psychiatrist's observations and evaluations, he concluded that:

- a. L.J.'s foster home was a chaotic setting that was the major cause of much of L.J.'s serious behavioral problems in the school and the community; and
- b. The home of L.J.'s foster mother was not conducive to a child's development and well-being.

112. As a result of psychiatrist's interviews and evaluations, he recommended to Defendants Gibson, Cooper, and Warner-Burke that L.J. be immediately removed from the home of the foster mother.

113. On October 15, 1981 and October 23, 1981, Defendant Gibson spoke with L.J.'s psychologist. During those conversations, the psychologist explained both her findings and recommendations and those of the child psychiatrist who had seen L.J. and his foster mother.

114. Defendants Cooper and Warner-Burke knew or had reason to know the findings, observations, conclusions, and recommendations of L.J.'s psychologist and psychiatrist.

115. The observations, findings, conclusions, and recommendations of L.J.'s psychologist and psychiatrist were incorporated into written reports completed on or about December 1, 1981.

116. On or about December 1, 1981, Defendants Gibson, Cooper and Warner-Burke had access to the written reports of L.J.'s psychologist and psychiatrist.

117. After receiving the reports or learning about the recommendations of L.J.'s psychiatrist and psychologist in December, 1981, Defendants Gibson, Cooper, and WarnerBurke failed to remove L.J. from the foster home or to take any other steps to protect him.

118. From December, 1981 until November, 1983, Defendants Gibson, Cooper, and WarnerBurke did not visit the home of the foster mother nor make

any other attempt to ascertain the condition of L.J.

119. L.J. continued to suffer from the abusive, neglectful, and inhumane treatment of the foster mother until January, 1984, when he was emergently removed from the foster home as a result of the foster care review hearing conducted in the Circuit Court for Baltimore City, Division for Juvenile Causes. He was subsequently committed to the care and custody of the Baltimore City Department of Social Services for specific placement in a residential treatment center.

120. As a direct and proximate result of the abuse, neglect, and inhumane treatment he suffered while in the foster home and of the failure of Defendants Holcombe, Gibson, Thomas,

Cooper, and Warner-Burke to assure that he received appropriate supportive services while in the community, L.J. is severely emotionally disturbed and his condition has required his temporary placement in a psychiatric hospital and subsequent long-term commitment to a residential treatment center for emotionally disturbed and deprived children.

121. At no time did Defendants Gibson, Thomas, Cooper, or Warner-Burke make any attempt to remove L.J. from the abusive foster home even though they had personally observed the care he was receiving in the foster home or received reports about it and had concluded that it was not in his best interest to remain there.

122. At no time did Defendants Gibson, Cooper, or Warner-Burke make any attempt to remove L.J. or to protect him from the abusive and neglectful conditions in the foster home even though they knew that two psychologists and a psychiatrist had recommended L.J.'s removal from the foster home.

123. Defendants Holcombe, Gibson, Thomas, Cooper, and Warner-Burke's failure to protect L.J. from harm, to attend school conferences, to monitor his progress in school, to provide counseling and other supportive services for him, to make frequent visits to the foster home, to re-evaluate L.J.'s foster home, and to remove him from the abusive and neglectful foster home in which they had placed him was the result, in part, of the Baltimore City

Department of Social Services' practices of assigning excessive caseload to caseworkers and leaving foster care cases unassigned for substantial periods of time.

124. Throughout L.J.'s placement in foster care, Defendants Holcombe, Gibson, Thomas, Cooper, and Warner-Burke did not have a case plan for him until approximately one month before the juvenile court's review of his case in January, 1984.

125. Throughout L.J.'s placement in foster care, Defendant Holcombe, Gibson, Thomas, Cooper, and Warner-Burke failed to conduct periodic reviews of L.J.'s case.

126. Throughout L.J.'s placement in foster care, Defendants Holcombe, Gibson, Thomas, Cooper, and Warner-Burke

failed to provide services to L.J. and his mother in order to improve conditions in his mother's home and to facilitate L.J.'s return to his mother.

127. Throughout L.J.'s placement in foster care, Defendants Holcombe, Gibson, Thomas, Cooper, and Warner-Burke did not provide, encourage, or facilitate visits between L.J. and his mother.

128. The injuries suffered by L.J. as outlined more specifically in Paragraphs 69 and 127 are a direct and proximate result of the failure of Defendants Holcombe, Gibson, Thomas, Cooper, Warner-Burke, and John Roes 1 and 2 to properly investigate and supervise the foster home, to provide L.J. with the appropriate supportive and rehabilitative services while in the foster home, to have a case plan for

L.J., to conduct periodic reviews of his case, and to respond to reports of suspected abuse in the foster home.

129. L.J. remains committed to the Baltimore City Department of Social Services and is subject to replacement by that agency.

O.S.

130. On January 6, 1984, pursuant to a voluntary agreement between her natural mother and the Baltimore City Department of Social Services, O.S., then three months old, was placed in the foster home of Mrs. Paula J.

131. The foster home of Mrs. Paula J. was licensed, approved, and under the direct supervision of the Baltimore City Department of Social Services, its agents, and employees.

132. Defendants John Roes 3 and 4 were responsible for and did in fact approve the foster home of Mrs. Paula J. as meeting the standards for foster homes under the federal and state law.

133. O.S.'s foster mother was incapable of providing proper care for O.S. which Defendants Fulton, DeWatkins, Zinkand, Warner-Burke, and John Roes 3 and 4 knew or should have know if O.S.'s foster home had been adequately investigated, screened, and supervised.

134. On January 20, 1984, O.S. was examined at Rosemont Community Doctors Center. Defendant Gail Fulton brought O.S. to this appointment and reported that the foster mother had problems feeding the child. O.S.'s weight was 8 pounds 12.5 ounces on January 20, 1984. Defendant Fulton was instructed by the

Center's physician to bring O.S. back to the clinic within two weeks so that the baby's weight and development could be monitored. On January 20, 1984, O.S.'s growth and development were appropriate for her age.

135. Defendant Fulton did not bring O.S. to medical appointments scheduled for her at the Rosemont Community Doctors Center on February 3, 1984 and February 10, 1984.

136. On February 21, 1984, O.S. was brought to the Rosemont Community Doctors Center and from there sent immediately to Johns Hopkins Hospital and left there by Defendant DeWatkins and the foster mother. This was the first time she had been seen for medical care and follow-up since January 20, 1984.

137. On February 21, 1984, O.S. was admitted to Johns Hopkins Hospital. Upon admission she was emaciated and malnourished. She had gained no weight since January 20, 1984.

138. From the first day of her admission to Johns Hopkins Hospital and throughout the course of her hospitalization there, O.S. consistently and rapidly gained weight.

139. Following O.S.'s admission to Johns Hopkins Hospital on February 21, 1984, O.S.'s physician at Johns Hopkins Hospital made several attempts to contact the foster mother to discuss her care of O.S., but the foster mother cancelled several appointments and did not provide the much needed medical history until February 25, 1984.

140. The foster mother, did not know how to properly feed O.S. in that:

- a. She believed that O.S. then four months old, could be fed like an adult;
- b. She mixed formula with incorrect proportions of water, formula and rice cereal;
- c. She fed O.S. formula that had been improperly diluted with water;
- d. She fed O.S. inappropriate food and drink; and
- e. She chewed up hot dogs, hamburgers, french fries, pork and beans, corn, and other foods, regurgitated them and fed them to O.S.

141. As a result of the facts alleged in Paragraphs 130 through 140,

O.S. suffered pain, was deprived of proper nourishment, did not gain any weight during the fourth month of her life, and did not receive appropriate medical care during that period of time.

142. O.S.'s failure to gain weight during her placement in the foster home of Mrs. Paula J. was a direct result of the foster mother's improper knowledge concerning the feeding of infants and her improper feeding of O.S. The foster mother knew or should have known that O.S. was not gaining weight, but she did not seek medical advice or attention for O.S.

143. On March 2, 1984, O.S. was transferred to Mount Washington Pediatric Hospital for further care, monitoring, and treatment.

144. During her hospitalization at Mount Washington Pediatric Hospital, the multidisciplinary staff of the hospital evaluated O.S.'s growth and development. They observed or concluded that she suffered from neurologic deficits and partial weakness of the limbs. Additional developmental delays were noted which require further consultation and evaluation by a neurodevelopmental specialist.

145. On April 19, 1984, O.S.'s placement in the care and custody of the Baltimore City Department of Social Services was continued under an order of shelter care from the Circuit Court for Baltimore City, Division for Juvenile Causes, pursuant to Md. Cts. & Jud. Proc. Code Ann. §3-815.

146. Between January 21, 1984, and February 21, 1984, neither Defendant Fulton nor Defendant DeWatkins visited or called the foster home of O.S. to monitor her progress there.1

147. Defendants Fulton, DeWatkins, and Zinkand knew or should have known that O.S. was a fragile child at risk of failure to thrive. They were aware of the need for close medical follow-up of O.S.'s growth and development during January and February, 1984 and with gross and wanton negligence and deliberate indifference failed to ensure that such follow-up was provided.

148. The harms suffered by O.S. as alleged in Paragraphs 134 through 144 were the proximate result of the failure of Defendants Warner-Burke, Zinkand, Fulton, and DeWatkins to properly

license, supervise, and train O.S.'s foster mother.

149. O.S. remains committed to the Baltimore City Department of Social Services and is subject to replacement by that agency.

M.S. and C.S.

150. M.S., who is twelve years old and C.S., who is six years old, are sisters who were the victims of repeated sexual attacks and sexual and physical abuse prior to their placement in foster care.

151. M.S. is a handicapped child whose disabilities included mental retardation and speech impairment prior to her entry into foster care.

152. On March 18, 1983, M.S. and C.S. were emergently removed from the custody of their mother and placed by

the Baltimore City Department of Social Services in the foster home of Alice and Charles E. On March 21, 1983, a shelter care hearing was held as a result of which the Baltimore City Department of Social Services was granted temporary care and custody of M.S. and C.S. by the Circuit Court for Baltimore City, Division for Juvenile Causes. On April 25, 1983, M.S. and C.S. were committed to the Baltimore City Department of Social Services by the Circuit Court for Baltimore City, Division for Juvenile Causes.

153. Following the Circuit Court's commitment of M.S. and C.S. to the Baltimore City Department of Social Services, the Baltimore City Department of Social Services continued M.S. and C.S. in placement with Mr. and Mrs. E.

154. The foster home of Alice and Charles E. was investigated by, approved by, and under the direct supervision of the Baltimore City Department of Social Services, its agents, and employees.

155. Defendants John Roes 5 and 6 were responsible for and did in fact approve the foster home of Alice and Charles E. as meeting the standards for foster homes under federal and state law.

156. The foster parents for M.S. and C.S. were incapable of providing proper care and supervision for M.S. and C.S. which Defendants Simmons, Baird, Lieman, John Roes 5 and 6, and Warner Burke knew or should have known if they had properly investigated, trained, and supervised the foster parents.

157. The foster parents showed no compassion, provided no affection, and were not supportive of M.S. and C.S.'s many emotional needs. The foster parents constantly belittled, ridiculed, and berated the girls in front of other children. They constantly referred to the children's natural mother in derogatory terms. The children were subjected to much derision for expressing their desire to return to their natural mother.

158. Shortly after their placement in the home of Mr. and Mrs. E., C.S. and M.S. underwent psychological evaluations and began therapy at John Hopkins Hospital. The therapist recommended that both M.S. and C.S. be seen for weekly psychotherapy to help them cope with and resolve the many abuses they

had suffered prior to coming into foster care. The therapist further recommended that the foster mother's participation in therapy was important to the girls achieving progress in therapy.

159. During the nine months that M.S. and C.S. were in her home, Mrs. E. participated in therapy with M.S. and C.S. in only three of the many sessions with M.S. and C.S. She did not assist in any other way to ensure the girls' progress in therapy. Defendants Simmons, Baird, Lieman know that the foster mother was not participating in the therapy sessions and that her failure to do so inhibited the girls' progress.

160. During the children's placement in the home of Mr. and Mrs. E. their therapist at Johns Hopkins Hospital repeatedly expressed concerns to

Defendants Simmons and Baird about the quality of care that the children were receiving in the home of Mr. and Mrs. E.

161. Defendants Simmons and Baird did not promptly or thoroughly investigate the therapist's complaints of neglect.

162. During the children's placement in the home of Mr. and Mrs. E., C.S. was subjected to inappropriate discipline. Among other abuses, she was forced by Mrs. E. to lick up her own vomit as punishment for getting sick.

163. Both C.S. and M.S. suffered emotional abuse, mistreatment, and neglect while in the foster home of Mr. and Mrs. E. which severely exacerbated the injuries and harms both girls had suffered before coming into foster care.

164. On or about December 25, 1983, Mrs. E. called the Department of Social Services and threatened to put the girls out on the street if the Baltimore City Department of Social Services did not remove them from her home.

165. On or about December 25, 1983, the children were removed from the foster home of Mr. and Mrs. E. and were separated for the first time in their lives. M.S. was placed in the home of Mr. and Mrs. James T. C.S. was placed in a group home.

166. The separation of M.S. and C.S. was against the explicit advice of the therapist who had been treating them for almost one year. Defendant Simmons, Baird, and Lieman were aware of this advice of the therapist.

167. Defendants Simmons, Baird, and Lieman did not prepare M.S. and C.S. for their separation from one another nor did they help them to understand and cope with this separation.

168. Defendants Simmons, Baird, and Lieman did not provide regular visitation or other contact between M.S. and C.S. after they were separated.

169. As a result of the actions of Defendants Simmons, Baird, and Lieman described in Paragraphs 166 through 168 M.S. and C.S. were deprived of companionship and comfort of one another.

170. The foster home of Mr. and Mrs. T. was approved by and under the direct supervision of the Baltimore City Department of Social Services, its agents, and employees.

171. Defendants John Roes 7 and 8 were responsible for and did in fact approve the foster home of Mr. and Mrs. T. as meeting the standards for foster homes under federal and state law.

172. Mr. T. had a history of emotional disturbance and a criminal record which the Baltimore City Department of Social Services, its agents, or employees knew or should have known if it had properly investigated or supervised the foster home of Mr. and Mrs. T.

173. Defendants Simmons, Baird, and Lieman knew or should have known that Mr. and Mrs. T. were incapable of providing proper care and supervision, especially for a young girl who had been the victim of repeated sexual assaults.

174. During her placement in the T. home, M.S. was repeatedly sexually abused by Mr. T., who after discovery of the abuse by his wife, attempted suicide.

175. Following the discovery of the sexual abuse of M.S. by Mr. T., Mrs. T. took M.S. and left her in the offices of the Howard County Department of Social Services. That same day M.S. was admitted to the University of Maryland Hospital, Child Psychiatry Unit.

176. As a direct and proximate result of the abuse and neglect of M.S. in the foster homes of Mr. and Mrs. E. and Mr. and Mrs. T., M.S. is a severely emotionally disturbed child who has now required hospitalization in a psychiatric facility and will require longterm

treatment in a psychiatric facility or residential treatment center.

177. The harms, injuries, and abuses suffered by M.S. and C.S. in the foster home of Mr. and Mrs. E. were a direct and proximate result of the failure of Defendants Simmons, Baird, Lieman, and John Roes 5 and 6 to adequately investigate, license, and supervise the E.'s foster home.

178. The harms, injuries, and abuses suffered by M.S. in the foster home of Mr. and Mrs. T. were a direct and proximate result of the failure of Defendants Simmons, Baird, Lieman, and John Roes 7 and 8 to adequately investigate, license, and supervise the T.'s foster home.

179. Throughout M.S. and C.S.'s placement in foster care, Defendants

Simmons, Baird, and Lieman have failed to develop a case plan for M.S. and C.S.

180. Throughout M.S. and C.S.'s placement in foster care, Defendants Simmons, Baird, and Lieman have failed to ensure that case reviews were conducted for M.S. and C.S.

181. M.S. and C.S. remain committed to the Baltimore City Department of Social Services and are subject to replacement by that agency.

R.R.

182. R.R. was the victim of sexual abuse by her natural father which began when she was approximately 12 years old and continued over a period of almost four years.

183. On February 10, 1983, R.R. was removed from the home of her natural parents by the Baltimore City Department

of Social Services and placed in the Baltimore City Department of Social Services foster home of John and Margaret K. pursuant to the emergency shelter care provisions of the Juvenile Causes Act, Md. Cts. & Jud. Proc. Code Ann. §3-801, et seq. On February 15, 1983, R.R. was committed to the Baltimore City Department of Social Services by the Circuit Court for Baltimore City, Division for Juvenile Causes.

184. The foster home of Margaret and John K. was licensed by, approved by, and under the direct supervision of the Baltimore City Department of Social Services, its agents, and employees.

185. Defendants John Roes 9 and 10 were responsible for and did in fact approve the foster home of Margaret and

John K. as meeting the standards for foster homes under federal and state law.

186. Mr. and Mrs. K. were not capable of providing proper care and supervision for R.R. which Defendants Collins, Warner-Burke, and John Roes 9 and 10 knew or should have known if they had adequately licensed and supervised the foster home.

187. During R.R.'s placement in the K. home, the foster parents repeatedly and deliberately and in the presence of other foster children taunted R.R. with the fact that she had been sexually abused, and they repeatedly suggested that she had enjoyed the abuse by her father.

188. Mr. K. constantly reminded R.R. that a previous foster child had

had sexual intercourse with him, and he persistently suggested that R.R. should do the same or that he might come up to her room some evening while she was sleeping.

189. R.R. lived in constant fear of sexual molestation by the foster father.

190. Prior to her placement in the foster home, R.R. had been attending both individual and group counseling to help overcome the trauma of sexual abuse by her father. The foster parents insisted that R.R. did not need to attend therapy and that she should stop attending. Due to fear of physical punishment or or other reprisal by the foster parents, R.R. stopped attending both group and individual counseling. Defendant Collins knew that R.R. had stopped attending therapy sessions. ■

191. During R.R.'s placement in the foster home she was repeatedly denied privacy, in that:

- a. She was compelled to share a single bed and bedroom with two other foster children.
- b. The door to the bedroom in which R.R. was sleeping had been removed and not replaced with any door, covering, or drapery.
- c. From September 1, 1983, R.R. was denied all future visits, telephone calls, or other communications with her sisters or other relatives.

192. R.R. was kept out of school several days per week by the foster parents so that she could work for the foster father's home improvement

business or keep the foster mother company. R.R. was not regularly paid for the painting and other work she performed for the foster father and her grades were substantially lowered because of the school absences.

193. The foster father repeatedly and deliberately made alcoholic beverages available to R.R. and other minor foster children and encouraged them to drink with him.

194. Beginning on or about June 1, 1983, R.R. made repeated phone calls to the Baltimore City Department of Social Services at different times of the day to request assistance and removal from the foster home. She repeatedly left messages with an agent or employee of the Baltimore City Department of Social Services requesting that a social worker

call her back. Defendant Collins did not return her phone calls, investigate her report of abuse and neglect or otherwise responded to her requests for help.

195. Beginning on or about June 1, 1983, several relatives of R.R. made repeated phone calls to the Baltimore City Department of Social Services to request R.R.'s removal from the foster home. Defendant Collins did not respond to their requests for help on behalf of R.R., nor investigate their reports of abuse or neglect, nor bring such condition to the attention of the juvenile court or law enforcement agency.

196. Between February 18, 1983 and October 1, 1983, neither Defendant Collins nor any other employee of the Baltimore City Department of Social

Services visited the foster home to talk with R.R. or to respond to her complaints about the foster home.

197. On or about October 1, 1983, a new social worker was assigned to R.R.'s case and after interviewing R.R., she immediately removed her from the foster home and placed her in the home of her natural sister.

198. Following R.R.'s removal from the foster home, the foster parents tore, cut, and otherwise destroyed the clothing of R.R. and misappropriated some jewelry that had been left behind when she was emergently removed from the foster home.

199. As a result of the foster parents' actions described in Paragraphs 183 through 194, R.R. experienced constant fear for her safety, emotional

suffering, severe mental anguish, and substantial deprivation of privacy throughout her foster care placement.

200. The facts alleged in Paragraphs 182 through 199 and the injuries described therein were the direct and proximate result of the failure of Defendants Collins and John Roes 9 and 10 to properly license, supervise, and train the foster parents.

201. The failure of Defendant Collins to properly supervise R.R.'s foster home and to respond to her and her relative's complaints of abuse and neglect was the result, in part of the Baltimore City Department of Social Services' practices of assigning excessive caseloads to workers in the Baltimore City Department of Social Services.

202. Throughout R.R.'s placement in foster care, Defendant Collins failed to develop a case plan for R.R.

203. Throughout R.R.'s placement in foster care, Defendant Collins failed to ensure that case reviews were conducted for R.R.

204. R.R. remains committed to the care and custody of the Baltimore City Department of Social Services and is subject to replacement by that agency.

P.G.

205. On July 14, 1967, P.G. who was then two weeks old, was committed to the care and custody of the Baltimore City Department of Social Services and placed in a foster home.

206. The Baltimore City Department of Social Services petitioned the juvenile court for custody of P.G. at

birth in order to ensure that P.G. received proper medical care. The Department alleged that P.G.'s older siblings had not received proper medical care and that the mother's home endangered the health and morals of P.G.

207. P.G. remained in her first foster home for almost two years. On March 12, 1969, she was placed in the foster home of Mr. and Mrs. Robert W.

208. The foster home of Mr. and Mrs. Robert W. was licensed and approved by, and under the direct supervision of the Baltimore City Department of Social Services, its agents, and employees.

209. Defendants John Roes 11 and 12 were responsible for and did in fact approve the foster home of Mr. and Mrs. Robert W. as meeting the standards for

foster homes under federal and state law.

210. P.G.'s foster parents were not capable of providing proper care for P.G. which Defendants Graves, Zuravin, and John Roes 11 and 12 knew or should have known if, prior to approving the home, they had adequately investigated it, or if, after initially approving it, they had properly supervised the foster home.

211. For more than four years, after her placement in the second foster home, from March 12, 1969 to March 29, 1973, P.G. was not seen by a physician or provided with any medical or dental care, routine or otherwise.

212. Defendant Zuravin knew as early as September, 1969, that P.G. was missing medical appointments while in

the foster home of Mr. and Mrs. Robert W., but she failed to take any action to ensure that P.G. received proper medical care.

213. On or about February 20, 1970, Defendant Zuravin received written notice that P.G. was continuing to miss clinic appointments, but she failed to take any action to ensure that P.G. received proper medical care.

214. On March 29, 1973, P.G. was seen by a physician at Baltimore City Hospital who discovered that P.G. had poor vision in the left eye. The physician referred P.G. to the Baltimore City Hospital Ophthalmology Clinic for close follow-up of the problem with her left eye.

215. P.G. was seen at the Baltimore City Hospital Ophthalmology Clinic for

several appointments in April and May, 1973, during which it was discovered that she suffered from amblyopia. The foster mother was instructed to bring P.G. back to the clinic for continued monitoring and follow-up of P.G.'s eye problem.

216. After May of 1973, P.G. missed numerous appointments at the Ophthalmology Clinic of Baltimore City Hospital and as a result, she did not receive proper medical care for her vision problems. Defendants Graves and Zuravin knew that P.G. missed appointments at the Ophthalmology Clinic and that she was not receiving proper medical care while in the foster home.

217. P.G. is now blind in her left eye as a direct and proximate result of the failure to provide prompt and

consistent medical care while she was in the foster home of Mr. and Mrs. Robert W.

218. P.G.'s blindness is a direct and proximate result of the failure of Defendants Graves and Zuravin to ensure that P.G. received proper medical treatment while in foster care.

219. The vision problems from which P.G. suffered in March of 1973 were most susceptible to treatment while she was young. Treatment for amblyopia should have continued from the time it was discovered. Every year that treatment and follow-up was not maintained, the chances for correction of the problem diminished.

220. Mrs. Robert W. was an alcoholic who eventually died from complications arising out of her alcoholism. For several years prior to her death,

Mrs. W. was hospitalized on numerous occasions for problems associated with her alcoholism. As a result of these hospitalizations, she was often out of the home for two to three months at a time.

221. Defendants Zuravin and Graves knew or had reason to know as early as March, 1974, that Mrs. W. was an alcoholic in that, among other things, the Baltimore City Department of Social Services had received reports from P.G.'s school that Mrs. W. had been drinking when she brought P.G. to school in the morning.

222. On or before September 1, 1975, Defendant Graves had observed the foster mother under the influence of alcohol and had seen her or the foster

father attempting to hide liquor bottles strewn about the house.

223. On or about September 1, 1975, Defendant Graves decided that P.G. should be removed from the foster home of Mr. and Mrs. W. and either placed in a new foster home or returned to her mother.

224. Despite reaching the conclusion in September, 1975, that P.G. should be placed in a different home, Defendant Graves took no action to replace P.G. in a suitable foster home or return her to the custody of her mother.

225. The failure of Defendants Graves and Zuravin and the Baltimore City Department of Social Services, its agents, and employees to ensure that P.G. received proper medical care and

that she was placed in a foster home which was able to provide proper care and meet her needs was due, in part, to the Department's practice of assigning excessive caseloads to workers and leaving cases uncovered for substantial periods of time.

226. P.G.'s case was uncovered for substantial periods of time including most of 1977 and six months of 1978.

227. Throughout P.G.'s placement in foster care, Defendants Zuravin and Graves have failed to develop a case plan for P.G.

228. Throughout P.G.'s placement in foster care, Defendants Zuravin and Graves have failed to ensure that case reviews were conducted by P.G.

229. Throughout P.G.'s placement in foster care, Defendants Zuravin and

Graves have not facilitated, encouraged or provided visits between P.G. and her natural mother.

230. The failure of Defendants Graves and Zuravin to provide P.G. with a case plan, to ensure that periodic reviews of her case were conducted, and to facilitate visitation with her mother was a direct and proximate cause of P.G.'s unnecessarily long placement in foster care.

231. P.G. was placed with her natural mother in August, 1984 but remains committed to the care and custody of the Baltimore City Department of Social Services and is subject to replacement by that agency.

B. INJURY TO PLAINTIFFS AND MEMBERS OF THE PLAINTIFF CLASS

232. Unless Defendants are enjoined by this court, Plaintiffs and members of the Plaintiff class, because of the actions and omissions of the Defendants will continue to suffer:

- a. Physical, psychological, and sexual abuse or neglect, mental anguish, humiliation, and pain inflicted by foster parents;
- b. Denial of necessary and timely dental and medical care and psychological and psychiatric services;
- c. Denial of case plans which are relevant to their individual needs;
- d. Deprivation of services necessary to maintain them in the community;

- e. Placement in homes in which Defendants have reason to believe that other foster children have previously been neglected, physically, emotionally, or sexually abused or deprived of minimally adequate care and supervision;
- f. Denial of frequent visitation and other meaningful contact and communication with their natural parents;
- g. Frequent separation from siblings who are also placed in foster care;
- h. Denial of adequate visitation or meaningful contact and communication among siblings in foster care;

- i. Denial of nurturance and emotional support necessary to their progress and development;
- j. Placement with foster parents who suffer from alcoholism or who have emotional or physical illnesses or criminal records, which render them unable to provide minimally adequate care;
- k. Unnecessarily long placements in foster care, denial of an opportunity for reunification with their natural families, and deprivation of alternative permanent placements when return home is not in their best interest;

l. Denial of other care, treatment and supervision which they need; and

m. Other and additional substantial harms as set forth more fully in the Complaint as a proximate result of the actions and omissions of the Defendants.

C. ACTS AND OMISSIONS OF
THE DEFENDANTS

233. The injuries suffered by L.J., O.S., M.S. C.S., R.R., and P.G. as outlined more specifically in the preceding sections of the Complaint are a direct and proximate result of Defendants Musgrove and WarnerBurke's deliberate indifference to the health, safety, and welfare of the named Plaintiffs and to other members of the

Plaintiff class. Their deliberate indifference is manifested by, inter alia:

- a. Their knowledge of, and failure to correct, a pattern and practice of using foster homes which fail to meet minimum federal and state standards for approval and licensure, which practice has existed, and continues to exist within the Baltimore City Department of Social Services;
- b. Their knowledge that most foster parents have not received training or that the training which was provided for foster parents was inadequate and their failure to

take steps to establish, maintain, and provide training for foster parents.

- c. Their knowledge that foster homes are not regularly visited and re-evaluated as required by state and federal law and their failure to correct such a practice;
- d. Their knowledge of, and failure to correct, a pattern and practice of continuing to use foster homes for the care of one member of the Plaintiff class after there has been abuse or neglect of another member of the Plaintiff in that home, which practice has existed, and continues to exist, within the Baltimore

City Department of Social
Services;

- e. Their knowledge of and failure to correct a pattern and practice of leaving the named Plaintiffs' and other foster care cases uncovered and unassigned to a caseworker for substantial periods of time which practice has existed and continues to exist within the Baltimore City Department of Social Services; and
- f. Their hiring or assignment of personnel to foster care caseloads with the knowledge that such personnel had not had sufficient training or experience to assure that the named Plaintiffs and members

of the Plaintiff class received proper care and services.

234. The injuries suffered by L.J., O.S., M.S., C.S., R.R., and P.G., as outlined more specifically in the preceding sections of the Complaint, are a direct and proximate result of the state defendants' deliberate indifference to the health, safety, and welfare of the named Plaintiffs and other members of the Plaintiff class. Their deliberate indifference is manifested by, inter alia:

- a. Their failure to regularly and properly supervise the foster care and child welfare services programs operated by the city defendants and to take corrective action when made

aware of gross deficiencies in those programs and of practices of the city defendants which endangered the life and safety of the named Plaintiffs and members of the Plaintiff class;

- b. Their failure to act upon reports of abuse in foster homes supervised by the city defendants, which were submitted to the General Registry of Child Abuse operated by the state defendants;
- c. Their knowledge of several studies documenting that there were excessive caseloads for foster care workers in the Baltimore City Department of Social Services and that those

excessive caseloads prohibited caseworkers from providing minimally adequate care and service to Plaintiffs and members of the Plaintiff class and their failure to act upon such studies to ensure that the Baltimore City Department of Social Services had sufficient numbers of caseworkers and caseworker supervisors to provide adequate licensing, monitoring, and supervision of foster homes and to provide supportive and rehabilitative services to Plaintiffs and members of the Plaintiff class;

- d. Their failure to establish and maintain minimum standards for

the hiring and training of caseworkers and caseworker supervisors who are responsible for the protection of Plaintiffs and members of the Plaintiff class;

- e. Their failure to establish and maintain minimum standards for both initial training and periodic supplemental training of Plaintiffs' foster parents and foster parents for members of the Plaintiff class; and
- f. Their failure to take appropriate personnel action against the city defendants for nonfeasance in fulfilling their duties to Plaintiffs and members of the Plaintiff class.

235. The Defendants have failed:

- a. To maintain and apply the standards for safety, sanitation, and civil rights which have been established for foster children in foster family homes;
- b. To develop case plan and case review systems that maintain appropriate foster care placements, assure proper care and services for foster children, and meet the best interests and special needs of the children in the most familylike settings available;
- c. To assure that services are provided to the child, parents, and foster parents to improve conditions in the

parents' home and to facilitate return of the child to his own home or other permanent placement of the child;

- d. To make in each case reasonable efforts to make it possible for the foster child to his parents' home;
- e. To bring matters to the attention of the appropriate court or law enforcement agency when the Defendants have had reason to believe that the foster home in which the child resides is unsuitable because of the neglect, abuse, or exploitation of such child;
- f. To ensure that investigations of abuse and neglect are

promptly initiated, that investigations are made by properly constituted authorities other than Defendants and their agencies when a report of abuse or neglect concerns a foster home supervised by Defendants, and that, upon a finding of abuse or neglect, immediate steps are taken to protect the health and welfare of the child.

236. The Defendants have failed to maintain and apply the standards that they have established for foster homes and foster parents pursuant to the Social Security Act. Among the standards they have failed to maintain and apply are requirements that:

- a. Foster parents selected by the agency must be capable of providing good parenting and foster homes approved by the agency must meet certain requirements for foster family homes;
- b. Foster parents and members of their families must be in good mental and physical health;
- c. Foster parents must have knowledge, interest in, and practice principles of good child care;
- d. Foster parents must have the maturity and personality characteristics such that they provide an emotion climate in which the child can grow and mature and have the maximum

opportunity for healthy personality development;

- e. Foster parents' age and strength must be such that they can meet the needs of the foster children placed with them;
- f. Foster parents must support and encourage children to attend school regularly and to make progress therein, and provide the child with adequate clothing and other supplies necessary for their participation in all school programs;
- g. The foster home must meet public health and sanitary requirements of the local health department;

- h. The foster home must have accessible space for outdoor activity, free from conditions dangerous to the health and safety of children;
- i. The foster home must provide each child with sleeping space, privacy, and his own individual bed;
- j. The foster home must be adequately furnished and provide children with items essential to basic health and comfort, including but not limited to adequate bedding, linens, and other personal essentials.

237. Among the standards Defendants have established pursuant to the Social Security Act for the city defendants to

follow that they have failed to maintain and apply are requirements that the city defendants:

- a. Maintain staff sufficient in number and qualification for the agency to carry out its foster care responsibilities;
- b. Assure that staff are qualified for their assignments and that they are regularly and consistently supervised by staff with professional training in social service and with experience in social work and practice;
- c. Provide continued training and development of all staff members and other additional help to enable staff to

develop professional competence;

- d. Maintain proper medical and casework records;
- e. Select and maintain foster homes in sufficient number and variety to provide for the types of children for whom the agency is responsible;
- f. Recognize when a child needs psychological and psychiatric service and assure that the child receives whatever he needs;
- g. Assure that children in their care receive physical and dental examinations at least annually and that the medical and dental care recommendations are followed;

- h. Closely supervise and regularly re-evaluate the child's growth and development in the foster home. Re-evaluations must be conducted by the city defendants 90 days after the child's initial placement, 180 days after placement, and at least once every six months thereafter, or more frequently if there is a substantial change in the child's circumstances;
- i. Provide supportive caseworker and rehabilitative services to the child who is in foster care;
- j. Upon receiving a report of suspected child abuse, make a thorough and prompt

investigation of that report, including an on-site investigation within twenty-four (24) hours during which the city defendants, its agents, and employees must see the child, attempt to have an on-site interview with the child's caretaker, and decide on the health, safety, and wellbeing of the child;

- k. Upon receiving a report of suspected child neglect, make a thorough and prompt investigation of that report, including an on-site investigation within five (5) days during which the city defendants, its agents, and employees must see the child, attempt to have an

on-site interview with the child's caretaker, and decide on the health, safety, and well-being of the child.

238. Since at least 1975, Defendants have been aware, based on a series of studies conducted at their behest, that the city defendants have been unable to carry out their legal responsibilities to foster children because worker/caseload ratios were much too high to ensure minimally adequate care and services to such children and their families.

239. Many of the Plaintiffs' cases and large numbers of cases of the Plaintiff class have been or are not assigned to any caseworker for substantial periods of time.

240. The city defendants constantly reassign cases of foster children with the result that Plaintiffs and members of their class are denied all continuity in casework and case plans are not developed, revised, or implemented for them.

241. The foster care and child welfare services programs are operated by the city defendants and are subject to the supervision, direction, and control of the state defendants.

242. The state defendants have a duty to supervise and ensure that the city defendants' actions with regard to foster children comply with state and federal laws and regulations.

243. At all times pertinent to this Complaint, Defendants' acts, policies, practices, and omissions which are

referred to in this Complaint occurred and continue to occur under color of state law, statute, ordinance, regulation, custom, or practice.

244. The state defendants knew or had reason to know that the city defendants operated their foster care program in contravention of federal laws and regulations as set forth more particularly in Paragraphs 65 through 237.

245. The state defendants have failed to properly supervise the foster care and child welfare services programs directly operated by the city defendants and to take necessary remedial action.

246. The state defendants have failed to ensure that the city defendants maintain the licensing standards required by federal law for every foster home used by the city defendants for

placement of Plaintiffs and members of their class.

247. The state defendants have consistently ignored substantial evidence of mismanagement and nonfeasance by the city defendants who are or have been responsible for foster care services provided to Plaintiffs and members of their class. The state defendants have failed to act upon the knowledge of the city defendants' pattern and practice of improperly supervising and failing to close foster homes in which abuse and neglect was extensively documented in agency case records.

248. At all times pertinent to this Complaint, Defendants knew or should have known of the actions and omissions referred to in this Complaint and of the adverse effects of those actions and

omissions upon Plaintiffs and members of their class.

249. At all times pertinent to this Complaint, Defendants had the ability and the authority to remedy the wrongful acts and omissions referred to in this Complaint.

250. The conditions described in Paragraphs 65 through 249 have occurred and continue to occur because of the willful and intentional acts, policies, and omissions, or gross and wanton negligence, or deliberate indifference of the Defendants in this action.

FIRST CAUSE OF ACTION

251. 42 U.S.C. §§671(a)(3) and (4) require that the Title IV-E foster care program be in effect statewide, be

mandatory on local agencies that administer the program, and be coordinated with the state's IV-B program.

252. 42 U.S.C. §§671(a)(1) and 672(c) require the state to make payments for certain children in foster care. Each such child is entitled to have foster care maintenance payments made on his or her behalf while he or she is in a foster family home, and each such home must be "licensed by the State in which it is situated or . . . approved, by the agency of such state having responsibility for licensing homes of this type, as meeting the standards established for such licensing."

253. 42 U.S.C. §671(1)(10) requires Defendants to establish, maintain, and apply standards of, inter alia, safety,

sanitation, and civil rights for foster children in foster family homes receiving funds under either Title IV-B or Title IV-E. Such standards must be reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes.

254. 42 U.S.C. §§627(a)(2)(B), 671(a) (16), 675(1), and 675(5) and 45 C.F.R. §§1356.121 and 1357.25 require Defendants to develop a case plan and case review system that, inter alia, maintains appropriate foster care placements, assures provision of proper care and services for the child, addresses the needs of the child while in foster care, and meets the best interests and special needs of the child.

255. By placing Plaintiffs and members of their class in foster homes wherein they have been neglected, abused, or exploited, by failing to maintain and apply standards of minimal safety, sanitation, and civil rights for foster children in foster families, including those standards set forth in paragraphs 60 and 61, and by placing children in inappropriate foster care placement, denying said children care and services necessary to address their needs and meet their best interests and special needs, Defendants have deprived Plaintiffs and members of the class of their rights under 42 U.S.C. §§671(a) (1), (3), (4), (9), (10), (16), 672(c), 675(1), 675(5), 627(a)(2), 45 C.F.R. §§1355-1357, and the Due Process Clause

of the Fourteenth Amendment to the United States Constitution.

SECOND CAUSE OF ACTION

256. Pursuant to 42 U.S.C. §671(a)(9) and 45 C.F.R. §1356.20, Defendants are required to provide that:

where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under [IV-E or IV-B] is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency.

42 U.S.C. §671(a)(9).

257. 42 U.S.C. §5103(b)(2)(c) requires Defendants to ensure that

investigations of reports of suspected abuse and neglect are promptly initiated and that, upon a finding of abuse or neglect, immediate steps are taken to protect the health and welfare of the abused or neglected child.

258. 45 C.F.R. §1340.14(3) requires Defendants, upon receipt of a report of abuse or neglect in a foster home approved by and under the supervision of the local Department of Social Services, to ensure that the investigation is made by some properly constituted authority other than the local Department of Social Services or the Social Services Administration.

259. By failing to investigate promptly reports of suspected abuse and neglect of Plaintiffs and members of their class, by failing to bring the

abuse, neglect, or exploitation of Plaintiffs and members of their class to the attention of the juvenile court or law enforcement officials, by failing to take immediate steps to ensure the health and well-being of Plaintiffs and members of their class once abuse or neglect has been discovered in a foster home, and by failing to ensure that investigations of abuse and neglect in homes supervised by Defendants are made by other properly constituted authorities, Defendants have deprived Plaintiffs and members of their class of their rights under 42 U.S.C. §674(a)(9) and §§5103(b)(2), 45 C.F.R. §§13450.14 (e) and 1356.20, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION

260. 42 U.S.C. §§627(a)(2)(B), 671(a) (16), and 675(1) require that each child's case plan assure that services are provided to "the parents, child, and foster parents in order to improve the conditions in the parents' home, [and] facilitate return of the child to his own home or the permanent placement of the child" Furthermore, Defendants must make "in each case, reasonable efforts to make it possible for the [foster] child to return to his home." 42 U.S.C. §671(a)(15); 45 C.F.R. §1356.21.

261. Defendants' failure to ensure that Plaintiffs and members of the Plaintiff class have case plans and obtain services that facilitate the

return of the children to their own homes or other permanent placement of the children and Defendants' failure to make reasonable efforts to make it possible for the children to return home, violate 42 U.S.C. §§671(a)(15), (16), 627(a)(2), 675, 45 C.F.R. §§1356.21 and 1356.25, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs on their own behalf and on behalf of all others similarly situated respectfully pray that this Honorable Court:

1. Assume jurisdiction of this action;

2. Declare this a class action under Fed. R. Civ. P. 23(b)(2) as soon as practical as set out in Fed. R. Civ. P. 23(c)(1);
3. Enter a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202, that state and city defendants' policies and practices have denied Plaintiffs and members of their class due process of law as guaranteed by the Constitution of the United States and that such policies and practices violate provisions of and rights secured by the Social Security Act and regulations promulgated pursuant thereto, 42 U.S.C. §§671(a)(1) - (4),

(9) - (11), (16), 672(c),
675(1) and (5), 627(a)(2),
5103(b)(2)(C) and 45 C.F.R.
§§1355-1357 and 1340.14(3);

4. Grant injunctions pursuant to
Fed. R. Civ. P. 65, enjoining
the state and city defendants
their successors in office,
agents, employees, and all
other persons in active
concert and participation with
them from:

- a. Licensing, maintaining,
and placing Plaintiffs
and members of their
class in foster homes
without first determining
that the foster parents
can meet the individual
needs of the child and

preparing the foster parents to meet the individual needs of each child placed in their home;

b. Licensing, maintaining, and placing Plaintiffs and members of their class in foster homes which do not meet all of the requirements established in the regulations governing care for such children and the licensing of foster homes;

c. Failing to remove Plaintiffs and members of their class from an abusive or neglectful foster home or to take

other immediate action to secure their health and safety;

- d. Failing to close or take licenses away from all inadequate, dangerous, and unhealthy foster homes;
- e. Failing to regularly and properly supervise foster homes;
- f. Assigning excessive caseloads to caseworkers who are responsible for Plaintiffs and members of the class;
- g. Failing to periodically re-evaluate case plans to determine if the foster care placement in which

Plaintiffs and members of their class are residing are appropriate for the child and are meeting the child's needs;

h. Failing to conduct periodic case reviews for Plaintiffs and each member of the Plaintiff class so as to determine and promptly implement a permanent plan for them and to evaluate their growth and development in the foster home;

i. Failing to provide medical and dental, rehabilitative, and supportive services to meet the needs of

Plaintiffs and members of
their class;

j. Failing to promptly
investigate reports of
suspected abuse, neglect,
or exploitation of
Plaintiffs and members of
their class;

k. Failing to conduct
private, confidential
interviews with Plain-
tiffs and members of
their class as a part of
any investigation of a
report of suspected
abuse, neglect or exploi-
tation of Plaintiffs and
members of their class;

l. Failing to promptly
investigate complaints of

abuse and neglect reported to the city defendants by Plaintiffs and members of their class;

- m. Failing to report suspected abuse, neglect, or exploitation of Plaintiffs and members of their class to the juvenile court and local law enforcement officials;
- n. Failing to recruit and maintain adequate numbers and types of foster homes to provide proper care and supervision of Plaintiffs and members of their class;

- o. Failing to encourage, facilitate, and provide frequent and meaningful visitation between Plaintiffs and their natural parents;
- p. Separating siblings placed in foster care from one another and not providing frequent visitation, other contact and communication between siblings who are placed in separate foster homes or institutions;
- q. Leaving cases of children uncovered with no case-worker directly responsible for supervision of children;

- r. Transferring cases of children without adequate transmission of information to ensure continuity of care;
- s. Failing to ensure that children receive appropriate educational placement and services;
- t. Licensing and maintaining foster homes, and placing Plaintiffs in foster homes, without providing training to foster parents to ensure their ability to care for the children;
- u. Assigning cases to workers and supervisors who have insufficient

training to prepare them to adequately ensure appropriate care for the children who are their responsibility;

v. Failing to take appropriate action with regard to personnel who have inadequately protected children.

5. Award Plaintiff L.J. \$3 million in actual damages and an as yet to be determined amount in punitive damages against the state defendants, Baltimore City Department of Social Services, Defendant Musgrove, Michael WarnerBurke, Cheryl Gibson, Bridgette Thomas, Marylyn Holcombe,

Delores Cooper, and John Roes
1 and 2.

6. Award Plaintiff O.S. \$3
million in actual damages and
an as yet to be determined
amount in punitive damages
against the state defendants,
Baltimore City Department of
Social Services, Defendants
Musgrove, Warner-Burke, Gail
Fulton, Elvia DeWatkins, and
John Roes 3 and 4.

7. Award Plaintiff M.S. \$3
million in actual damages an
as yet to be determined amount
in punitive damages against
the state defendants, Balti-
more City Department of Social
Services, Defendants Musgrove,
Warner-Burke, Simmons, Baird,

Lieman, and John Roes 5
through 8.

8. Award Plaintiff C.S. \$3
million in actual damages and
an as yet to be determined
amount in punitive damages
against the state defendants,
the Baltimore City Department
of Social Services, Defendants
Musgrove, Warner-Burke,
Simmons, Baird, Lieman, and
John Roes 5 through 6.

9. Award Plaintiff R.R. \$3
million in actual damages and
an as yet to be determined
amount in punitive damages
against the state defendants,
the Baltimore City Department
of Social Services, Defendants
Musgrove, Warner-Burke,

Collins and John Roes 9 and 10.

10. Award Plaintiff P.G. \$3 million in actual damages and an as yet to be determined amount in punitive damages against the state defendants, the Baltimore City Department of Social Services, Defendants Musgrove, Warner-Burke, Graves, Zuravin and John Roes 11 and 12.

11. Award reasonable attorney fees and costs to Plaintiffs' attorney pursuant to 42 U.S.C. §1988.

12. Grant the named Plaintiffs a jury trial on the limited issue of monetary damages -

both compensatory and punitive.

13. Award Plaintiffs and members of the class any and all other relief as may be deemed appropriate by this court.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on December 5, 1984, a copy of the Motion for Leave to Proceed Anonymously, Affidavit of William L. Grimm in Support of Motion for Leave to Proceed Anonymously, Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Proceed Anonymously, Proposed Order, and Affidavits of Plaintiffs in Support of Motion to Proceed in Forma Pauperis, was personally delivered to Ralph S. Tyler, Assistant Attorney General, Munsey Building, Calvert and Fayette Streets, Baltimore, Maryland 21202.

William L. Grimm
Legal Aid Bureau, Inc.,
714 E. Pratt St., 7th Fl.
Baltimore, Maryland 21202

Attorney for Plaintiffs

